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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,444	03/14/2001	George E. Carter	2001P04445US	5223

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Siemens Corporation
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EXAMINER

CASIANO, ANGEL L

ART UNIT

PAPER NUMBER

2182

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/809,444		CARTER, GEORGE E.	
	Examiner		Art Unit	
	Angel L. Casiano		2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

The present Office action is in response to communication dated 03 November 2005.

Claims 1-30 are pending.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-3, 7-18, and 22-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schrier et al. [US 5,640,394] in view of Fletcher et al. [US 6,009,274].

Regarding claim 1, Schrier et al. teaches a method of loading protocol stacks, including the steps of receiving a message to load a first protocol stack (see col. 4, lines 29-30);

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determining whether the first protocol stack can be loaded (see col. 4, lines 31-34); unloading (see “terminate”) a second protocol stack if the first protocol stack cannot be initially loaded (see col. 4, lines 34-37); and loading the first protocol stack (see “real mode protocol stack”). However, the reference does not teach the step of *selecting a second protocol stack to be unloaded, wherein selecting the second protocol stack to be unloaded includes selecting the second protocol stack to be unloaded from a plurality of protocol stacks, the protocol stacks not including the first protocol stack*, as claimed. As for these limitations, Fletcher et al. teaches a second protocol to be unloaded (see unbind) from a plurality of protocols (see “the different protocols”), not including the first protocol stack (see col. 5, lines 56-61 and col. 13, lines 40-50).

At the time of the invention, one of ordinary skill in the art would have been motivated to combine the cited disclosures in order to implement a method for automatically updating software, as taught by Fletcher et al. (see Abstract).

As for claim 2, Schrier et al. teaches memory conflicts for loading a protocol stack (see col. 4, lines 8-10 and 23-24).

As per claim 3, Schrier et al. teaches first and second protocol stacks, which are not compatible (see col. 3, line 46).

As for claim 7, Schrier et al. teaches launching a process (see col. 4, lines 16-17) for the first protocol stack.

As per claim 8, Schrier et al. discloses a second protocol being unloaded by termination (see col. 4, line 34).

As for claim 9, Schrier et al. teaches portions (see “layers”) of the protocol stack to be loaded (see col. 4, lines 18 and 26).

Regarding claim 10, the combination of references teaches a method of loading protocol stacks, including the steps of receiving a message to load a first protocol stack (see col. 4, lines 29-30); determining whether the first protocol stack can be loaded (see col. 4, lines 31-34); unloading (see “terminate”) a second protocol stack if the first protocol stack cannot be initially loaded (see col. 4, lines 34-37); and loading the first protocol stack (see “real mode protocol stack”).

Accordingly, the combination also teaches a method for running multiple incompatible network protocol stacks where the method is implemented in a computer program product.

As for claims 11 and 13, the combination of references does not teach that the computer readable medium is a CD-ROM, floppy disk, tape, flash memory, system memory, hard drive, or a data signal embodied in a carrier wave. Nonetheless, it does teach a computer program product

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(see claim 10). Accordingly, these are well known examples of computer program products in the art.

Regarding claim 12, the combination of references teaches a method of loading protocol stacks, including the steps of receiving a message to load a first protocol stack (see col. 4, lines 29-30); determining whether the first protocol stack can be loaded (see col. 4, lines 31-34); unloading (see “terminate”) a second protocol stack if the first protocol stack cannot be initially loaded (see col. 4, lines 34-37); and loading the first protocol stack (see “real mode protocol stack”).

Accordingly, the combination also teaches a system for running multiple incompatible network protocol stacks (see Title). The cited system includes a processor (see Schrier, Figure 2).

Regarding claims 14-18 and 22-24, these constitute a variation of the method previously rejected in the present Office action. The combination of prior art cited by the Examiner teaches or suggests all the limitations corresponding to the claimed method. Accordingly, the present claims are rejected under the same rationale.

Regarding claim 25, this constitutes a variation of the computer program product previously rejected in the present Office action. The combination of prior art cited by the Examiner teaches or suggests all the limitations corresponding to the claimed computer program product. Accordingly, the present claim is rejected under the same rationale.

As for claim 26, this constitutes a variation of the computer program product previously rejected in the present Office action. The reference cited by the Examiner teaches or suggests all the limitations corresponding to the claimed computer program product. Accordingly, the present claim is rejected under the same rationale.

Regarding claim 27, this constitutes a variation of the system previously rejected in the present Office action. The combination of prior art cited by the Examiner teaches or suggests all the limitations corresponding to the claimed system. Accordingly, the present claim is rejected under the same rationale.

As per claim 28, this constitutes a variation of the system previously rejected in the present Office action. The reference cited by the Examiner teaches or suggests all the limitations corresponding to the claimed system. Accordingly, the present claim is rejected under the same rationale.

As for claim 29, Schrier et al. does not teach a method including *one* of: determining when the second protocol stack is in use, determining an amount of memory the second protocol stack needs to be loaded, and determining whether the second protocol stack is compatible with the first protocol stack. As for these limitations, Fletcher et al. teaches determining whether the second protocol stack is in use and determining whether the second protocol stack is compatible with the first protocol stack (see col. 13, lines 45-50).

At the time of the invention, one of ordinary skill in the art would have been motivated to combine the cited disclosures for the reasons stated above.

As for claim 30, Schrier et al. does not explicitly teach that a second protocol stack is not in use when determining whether the first protocol stack can be loaded, as claimed. Fletcher et al. teaches identifying whether a new version is not in use, so that it can be loaded (see col. 5, lines 56-61).

At the time of the invention, one of ordinary skill in the art would have been motivated to combine the cited disclosures for the reasons stated above.

4. Claims 4-6 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schrier et al. [US 5,640,394] in view of Fletcher et al. [US 6,009,274] in further view of Coleman et al. [US 6,032,154].

As for claim 4, the combination of references does not explicitly teach a computer-implemented method where a database is accessed for procedures for loading a protocol stack. As for this limitation, Coleman et al. teaches a database memory (see Abstract; Figure 2, “32”; col. 7, lines 3-13). This database stores information for the protocol stacks (see col. 7, line 14). Therefore, it would have been obvious to one of ordinary skill in the art to modify the cited combination of disclosures in order to provide a memory, which would contain “folders, objects, devices, points, etc.” (see Coleman et al.), as “understood in the art”, for the protocol stacks.

Furthermore, one of ordinary skill in the art would have been motivated to modify the combination since the database disclosed by Coleman et al. is “expandable” and “scalable”.

As per claim 5, the combination of references does not explicitly teach a computer-implemented method where a database is accessed for procedures for unloading a second protocol stack. Nonetheless, Coleman et al. teaches a database memory (see Abstract; Figure 2, “32”; col. 7, lines 3-13). This database stores information for protocol stacks (see col. 7, line 14). It would have been obvious to one of ordinary skill in the art to modify the combination of disclosures for the reasons stated above.

As for claim 6, the combination of references does not explicitly teach a computer-implemented method where a database is accessed for determining that a first and second protocol stacks are not compatible. Regarding this limitation, Coleman et al. teaches a database memory (see Abstract; Figure 2, “32”; col. 7, lines 3-13). This database stores information for the protocol stacks (see col. 7, line 14). It would have been obvious to one of ordinary skill in the art to modify the combination of disclosures for the reasons stated above.

As for claims 19-21, these constitute a variation of the method previously rejected in the present Office action. The references cited by the Examiner teach or suggest all the limitations corresponding to the claimed method. Accordingly, the present claims are rejected under the same rationale.

Response to Arguments

5. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Pedersen et al. [US 5,826,027] teaches protocol stack to be a driver stack (see col. 2, lines 8-9).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angel L. Casiano whose telephone number is 571-272-4142. The examiner can normally be reached on 9:00-5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Huynh can be reached on 571-272-4147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alc
18 January 2005


T/19/05
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SUPERVISORY PATENT EXAMINER